

Nurse's Role in Section 504 Accommodation Plans

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Objectives:

- Review 504 legislation and current eligibility criteria
- Describe the 504 process
- Give examples of the school nurse's contributions

Section 504 of the Rehabilitation Act of 1973

- Section 504, is the federal law established to protect against discrimination on the basis of a handicap. A handicapped person is one who has (or has a record of, or is regarded as having) a physical or mental impairment which substantially limits one or more life activities.

The definition of disability in 504 is broader than in IDEA because it extends beyond learning to other more health related functions under criterion of “major life activities”, such as walking, eating and breathing.

Many students who are served under individual health care plans (IHCP) may now be eligible for Section 504 plans.

Therefore school nurses even more likely to be involved with 504 plans than IEP's.

Congress passed the Rehabilitation Act of 1973 as part of a string of civil rights laws.

Section 504 is a federal law designed to protect the rights of individuals with disabilities in programs and activities that receive Federal financial assistance from U.S. Department of Education.

Office of Civil Rights enforces the law (not DPI).

On September 26, 2008 President Bush signed into law amendments to the American With Disabilities Act (ADA). The amendments went into effect on January 1, 2009. The changes directly effected Section 504 and placement of children utilizing a 504 Plan.

Five years later we are still seeing school districts trying to adapt to the changes and ramifications.

504- How It Helps Students

If the student is “eligible” then accommodation plan is written to eliminate barriers to accessing public school programs and extra curricular activities for which they’d be eligible if they did not have such a disability.

Who is Eligible?

To be protected under 504 in public elementary and secondary schools a student must be determined to:

- Have a *physical or mental impairment* that substantially limits one or more major life activities.
- Have a record of such impairment; or
- Is regarded as having such impairment. (People believe they have an impairment whether or not they do. 7)

- Note: The second and third prongs of the definition referring to individuals with a record of or regarded as having an impairment is relevant only when some negative action is taken based on the perception or record. They cannot be the basis upon which the requirement for a free appropriate public education (FAPE) is triggered (OCR Policy Memorandum, (1992)).
- The mere fact that a student has a “record of” or is “regarded as” disabled is insufficient, in itself, to trigger Section 504 protections that require the provision of FAPE. **Therefore, a school district is not required to develop a Section 504 plan for such student.** 1 (Answer 37)

- **An entity need not provide a reasonable modification of policies, practices, or procedures to individuals who meet the definition of disability solely because they are "regarded as" having a physical or mental impairment. See Amendments Act § 6(a) (codified as amended at 42 U.S.C. § 12201(h)). As described above, however, such individuals would be entitled to protection from discrimination, including but not limited to protection from retaliation and harassment on the basis of disability. 11

Explanation

- Cannot NOT allow the “squirrely” first grader to go on the field trip because he is thought to have ADHD and might act up. That would be discrimination.
- But would not be REQUIRED to provide accommodations. (But think about what is best practice not letter of the law.)

A qualified student with a disability is protected (from discrimination) whether or not the student needs special education. (6)

- For example, a student with diabetes who does not need special education may qualify and be protected because he/she has a physical impairment that substantially limits a major life activity .

What is a physical or mental impairment?

- Decision is based on individual (not category).
- Defined as any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems: neurological; musculoskeletal; special sense organs; respiratory, including speech organs; cardiovascular; reproductive; digestive; genito-urinary; hemic and lymphatic; skin; and endocrine;
- Not an exhaustive list because difficult to ensure comprehensiveness.

Mental impairments are “any mental or psychological disorder, such as mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities.”

Specific learning disability is listed as an example and has same meaning as in special education. (7)

DSM-IV is a source for determining but not all conditions in manual would constitute a mental impairment. (7)

Drugs and Alcohol Addiction

- Students currently using drugs are not covered under 504. But they are if they are no longer abusing drugs (if a major life activity affected because of it). 8
- Section 504's definition of a student with a disability does not exclude users of alcohol. (1 - Question 17)

What is a Major Life Activity?

- Includes caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, **learning**, and working.
- New law added – eating, sleeping, standing, lifting, bending, **reading**, concentrating, **thinking** and **communication**.
- Major life activity also includes the operation of major bodily functions.

Major Bodily Functions

- Functions of immune system, normal cell growth, digestive, bowel, bladder, neurological, brain, respiratory, circulatory, endocrine and reproductive systems
- List is non-exhaustive and not exclusive
- Only needs to substantially limit one major life activity (or bodily function) to be considered a disability

Mitigating Measures

- School districts can no longer consider the “ameliorating effects of any mitigating measures that a student is using”.

(ameliorate: to make or become better; improve)

- Mitigating measures not defined but law provides non-exhaustive list.

Mitigating Measures

- Medication; medical supplies, equipment or appliances; low vision-vision devices (does NOT include ordinary eyeglasses or contact lenses); prosthetics (including limbs and devices); hearing aids and cochlear implants or other implantable hearing devices; mobility devices; oxygen therapy equipment and supplies; use of assistive technology; reasonable accommodations or auxiliary aids or services; and learned behavioral or adaptive neurological modifications.

Mitigating Measures

- The term “auxiliary aids and services” is defined to include: qualified interpreters or other effective methods of making aurally delivered materials available to individuals with hearing impairments; qualified readers, taped texts, or other effective methods of making visually delivered materials available to individuals with visual impairments; acquisition or modification of equipment or devices and other similar services and actions (10).

For example: a person with diabetes who is taking insulin must be viewed in terms of how the diabetes would impact the person without the insulin.

A person with ADHD who is taking Ritalin must be viewed in terms of how the ADHD would impact the person without the Ritalin.

A hearing impaired person must be viewed in terms of how the deafness would impact the person without an interpreter.

Must also view the person without the benefit of learned behavioral or adaptive neurological modifications.

Example: a student with ADHD seems to have his/her attentional issues under control by being given extra time for testing and by being permitted to get up and move every 15 minutes, make lists, or some other behavioral intervention. The question would be then - would a substantial limitation in a major life activity exist without them? (7)

- Medical diagnosis of an illness does NOT automatically mean a student qualifies for services under Section 504.
- A student who has a physical or mental impairment would not be considered eligible for 504 services if the impairment does not in any way limit the student's ability to learn or other major life activity, or only results in some minor limitations.
- The impairment must substantially limit one or more major life activity.

What does Substantially Limit Mean?

Section 504 does not specifically define "substantial limitation."

However, the school-based 504 team can look to the Americans with Disabilities Act (ADA) for guidance. The ADA protects the rights of disabled individuals in the workplace and states that an individual is "substantially limited" by a disability if,

- He/she is unable to perform a major life activity that the average person in the general population can perform, or
- He/she is significantly restricted as to the *condition, manner,* or *duration* under which the average person in the general population can perform the same major life activity.

In the school context, the student in question would be compared to an average student of the same age or grade level in the general (national not local) population. (5)

Episodic or Transitory Impairments

- An impairment that is episodic or in remission is a disability if it would substantially limit a major life activity when active. (6)
- Does not apply to impairments that are transitory or minor. A transitory impairment is an impairment with an actual or expected duration of six months or less. (4)

- ****In most cases, application of these rules should quickly shift the inquiry away from the question whether a student has a disability (and thus is protected by the ADA and Section 504), and toward the school district's actions and obligations to ensure equal educational opportunities. While there are no per se disabilities under Section 504 and Title II, the nature of many impairments is such that, in virtually every case, a determination in favor of disability will be made. Thus, for example, a school district should not need or require extensive documentation or analysis to determine that a child with diabetes, epilepsy, bipolar disorder, or autism has a disability under Section 504 and Title II. 11****

So Then What EXACTLY is 504?!!

- Part of federal antidiscrimination law
- No funding attached
- Assures students with disabilities appropriate educational services to meet their individual needs to the same extent as students without disabilities
- Could consist of education in regular classroom, regular classroom with supplemental services, and/or special education and related services (IF ALSO qualifies for Special Education).

“Appropriate Education”

- Appropriate means an education comparable to the education provided to students without disabilities.
- “Appropriate education is defined as the provision of regular or special education and related aids and services designed to meet the student’s individual needs as adequately as the needs of non-disabled persons are met.” (6)

Do they have to get A's?

- “Disabled” students have a right to an education program reasonably calculated to provide educational benefit. For most students that means passing grades and advancing from grade to grade. (7)
- Section 504 does not require a public school to provide a potential maximizing education to students with disabilities, only reasonable accommodations that give those students the same access to the benefits of a public education as all other students. (10)
- 504 plans are not meant to give a student an extra advantage – “levels the playing field.”

- ***Case law has indicated that students can still be considered to qualify for 504 (and should be evaluated for it by school districts) even if learning is not affected. (9, 10)
- “Therefore, rather than considering only how an impairment affects a student's ability to learn, a recipient or public entity must consider how an impairment affects any major life activity of the student and, if necessary, must assess what is needed to ensure that student's equal opportunity to participate in the recipient's or public entity's program.”¹¹

504 Process

- Each school district has to develop their own process. May use same process to evaluate as under IDEA.
- Team members must be knowledgeable and draw from a variety of sources. Information from sources should be documented.
- Recommended that plan be written but not mandatory that it is. No required format.
- Student stays eligible until team decides is no longer eligible. (Need some process for reevaluation.)

504- How It Works

- ✓ Referral by parent, teacher, school nurse, counselor, psychologist, social worker or principal.
- ✓ Parent notice of evaluation
- ✓ Assessment
- ✓ 504 Team meeting to determine eligibility
- ✓ Development of 504 Accommodation Plan
- ✓ Implementation of Plan
- ✓ Determine case manager

504 Eligibility Questions to be Answered by Team

1. Does the student have a physical or mental impairment?
- 2 a. Do the activities claimed to be impaired qualify as a major life activity (caring for oneself, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, working, eating, sleeping, standing, lifting, bending, reading, concentrating, thinking and communication)?

504 Eligibility Questions to be Answered by Team

2b. Do the activities claimed to be impaired qualify as a major bodily function (Functions of immune system, normal cell growth, digestive, bowel, bladder, neurological, brain, respiratory, circulatory, endocrine and reproductive)?

3. Does the physical or mental impairment substantially limit one or more major life activities?

Remember can not consider mitigating measures other than the use normal of eye glasses or contacts.

School Nursing is:

A specialized practice of professional nursing that advances the well-being, academic success, and life-long achievement of students. To that end, school nurses *facilitate positive student responses to normal development; promote health and safety; intervene with actual and potential health problems; provide *case management services; and *actively collaborate with others to build student and family capacity for adaptation, self management, self advocacy, and learning (NASN, 1999).

*School Nurse's role in 504 Plan

School Nurse's Role in 504 Process

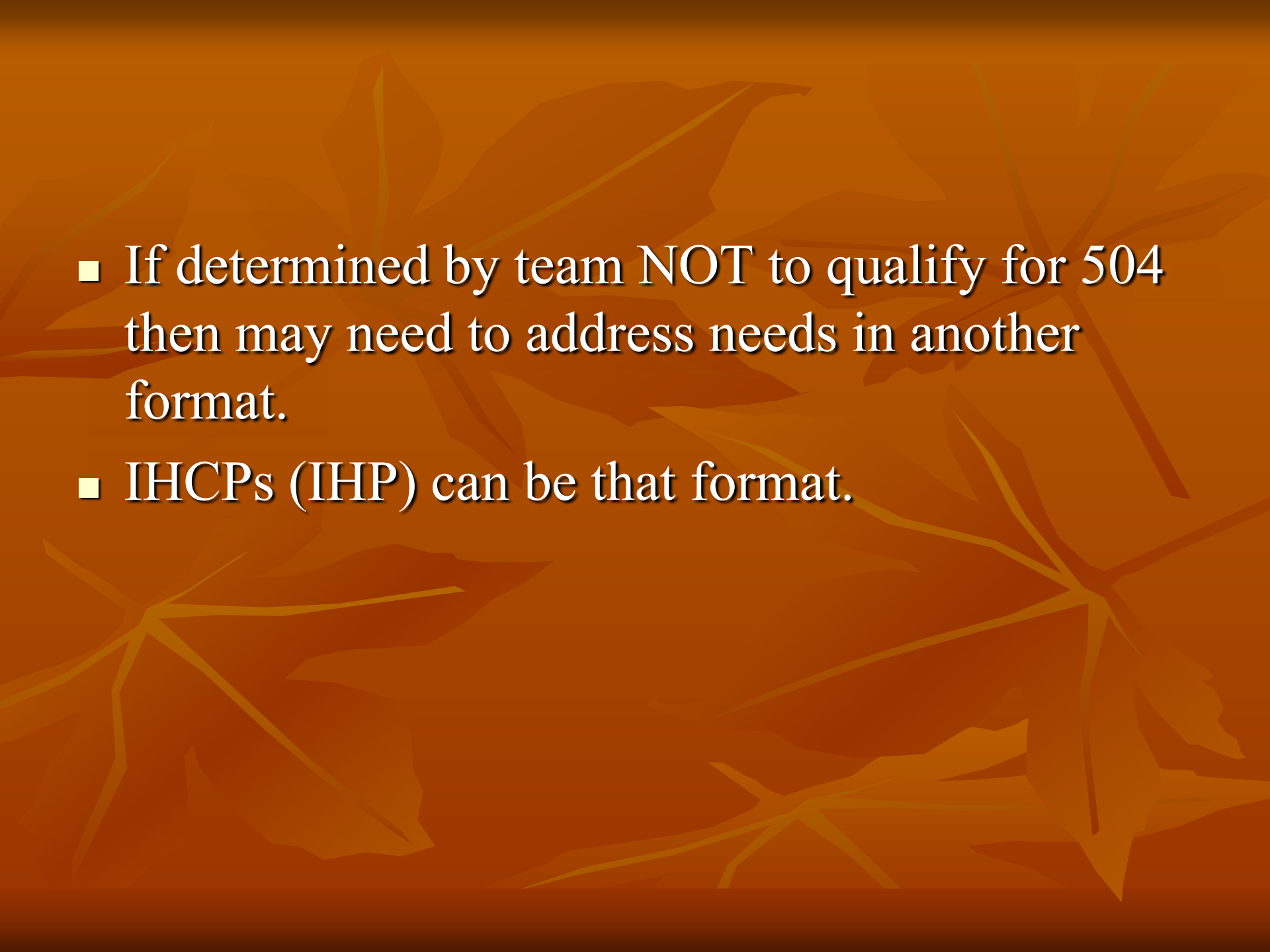
- Interpret the student's health status and explain the impairment in terms of (a) the major life activity affected; (b) whether the limitation for this student at the current time is considered mild, moderate or severe, and why, and (c) the known or anticipated duration of limitation.

School Nurse's Role in 504 Process

Explain observed impact of health conditions on student's school participation. Articulate the following to the team:

- how the disability interferes with one or more life functions;
- how the disability affects the student's functioning (e.g., low energy level, exercise needs, medication effects, etc)

- Recommend health-related accommodations or supports so that the eligible student has equal access to education.
- Review student's health record (# visits to health office, absences for medical reasons, teacher/parent concerns).
- May need to conduct in-depth health history.
- May need to obtain medical reports.

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- If determined by team NOT to qualify for 504 then may need to address needs in another format.
 - IHCPs (IHP) can be that format.

- ***For example, suppose a student is diagnosed with severe asthma that is a disability because it substantially limits the major life activity of breathing and the function of the respiratory system. However, based on the evaluation, the student does not need any special education or related service as a result of the disability. This student fully participates in her school's regular physical education program and in extracurricular sports; she does not need help administering her medicine; and she does not require any modifications to the school's policies, practices, or procedures. The school district is not obligated to provide the student with any additional services. The student is still a person with a disability, however, and therefore remains protected by the general nondiscrimination provisions of Section 504 and Title II.11

Individualized Health Care Plans*

- IHCPs (IHP) could be the 504 Plan when the accommodations are only health-related. If so, subject to same regulations of Section 504.
- IHCPs (IHP) can also be part of the 504 Plan for eligible students who also have academic accommodations.

Case Manager's Responsibilities

- May be school nurse if accommodations are primarily health related (IHCP). If mostly academic then may be school psychologist, school counselor, teacher, etc.
- Monitors student's response to accommodations, communicates with parents and health care providers, (school nurse case manager) modifies the IHP as needed, and calls a meeting of the 504 team to make changes to the 504 Plan as needed.
- Law mandates that school districts reevaluate a student who has a 504 Plan whenever there is "any significant change in placement." Annual review best practice.

504 –Examples of What Could be Done

- Medication monitoring
- Assistance getting to classes
- Shortened school day
- Late passes
- Extended test taking time
- More frequent scheduled breaks
- Flexible bathroom privileges
- Field trip accommodations
- Permission to use mechanical aids (cell phones)

Example Food Allergy

1. Does the student have a physical or mental impairment?
2. Do the activities claimed to be impaired qualify as a major life activity (caring for oneself, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, working, eating, sleeping, standing, lifting, bending, reading, concentrating, thinking and communication)? Do the activities claimed to be impaired qualify as a major bodily function (functions of immune system, normal cell growth, digestive, bowel, bladder, neurological, brain, respiratory, circulatory, endocrine and reproductive)?
3. Does the physical or mental impairment substantially limit one or more major life activities?

1. Yes.
2. Yes. Which ones?
3. Depends on student (individual decision).

What about Epipen (mitigating measure)? What about precautions outlined in IHP?

Plan:

Can't exclude for field trips

Science Lab accommodations

Change of soap

Example ADHD

1. Does the student have a physical or mental impairment?
2. Do the activities claimed to be impaired qualify as a major life activity (caring for oneself, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, working, eating, sleeping, standing, lifting, bending, reading, concentrating, thinking and communication)? Do the activities claimed to be impaired qualify as a major bodily function (functions of immune system, normal cell growth, digestive, bowel, bladder, neurological, brain, respiratory, circulatory, endocrine and reproductive)?
3. Does the physical or mental impairment substantially limit one or more major life activities?

1. Yes

2. Yes. Which ones?

3. Depends on student (individual decision).

What are some mitigating measures for this student?

Example ADHD

1. Does the student have a physical or mental impairment?
2. Do the activities claimed to be impaired qualify as a major life activity (caring for oneself, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, working, eating, sleeping, standing, lifting, bending, reading, concentrating, thinking and communication)? Do the activities claimed to be impaired qualify as a major bodily function (functions of immune system, normal cell growth, digestive, bowel, bladder, neurological, brain, respiratory, circulatory, endocrine and reproductive)?
3. Does the physical or mental impairment substantially limit one or more major life activities?

1. Yes

2. Yes. Which ones?

3. Depends on student (individual decision).

What are some mitigating measures for this student?

Concerta, behavioral plan, Alpha Smart

Example Crohn's Disease

1. Does the student have a physical or mental impairment?
2. Do the activities claimed to be impaired qualify as a major life activity (caring for oneself, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, working, eating, sleeping, standing, lifting, bending, reading, concentrating, thinking and communication)? Do the activities claimed to be impaired qualify as a major bodily function (functions of immune system, normal cell growth, digestive, bowel, bladder, neurological, brain, respiratory, circulatory, endocrine and reproductive)?
3. Does the physical or mental impairment substantially limit one or more major life activities?

1. Yes
2. Yes. Which ones?
3. Depends on student (individual decision).

An impairment that is episodic or in remission is a disability if it would substantially limit a major life activity when active.

Plan:
Bathroom break
No truancy
Testing accommodations
Rest periods

The background of the slide is a solid orange color with a pattern of stylized, darker orange leaves. The leaves are scattered across the frame, with some showing prominent veins. The overall aesthetic is warm and autumnal.

Questions????

References

1.ED.gov (2008) Protecting students with disabilities. Frequently asked questions about section 504 and the education of children with disabilities. Found September 13, 2009

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2. Moses, M., Gilchrest, C., & Schwab, N. (2005). Section 504 of the rehabilitation act: Determining eligibility and implications for school districts. *The Journal of School Nursing* 21(1), 48-58.

3. Zirkel, P. A. (2009). History and expansion of section 504 student eligibility: Implications for school nurses. *The Journal of School Nursing* 25(4), 256-260.

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4. Legal Update: The ADA Amendments Acts of 2008 and Its Implications for Section 504 Coverage WCASS Region 2 Fall Meeting – Oshkosh, Wisconsin October 22, 2008
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5. NASN, 2005. Issue Brief: Section 504 of the rehabilitation act of 1973

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6. *“Section 504 and the Education of Student with Disabilites in Public Elementary & Secondary Schools,”* U.S. Department of Education Office for Civil Rights (OCR), presentation WASN Spring conference April 8, 2011 presentor Camille D. Lee, Esq.

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7. *SECTION 504 IN-DEPTH FOR EDUCATORS*. Cedar Grove-Belgium School District – Section 504 Materials from SchoolLaw.com
- 8. OCR Memorandum, 17 IDELR 609(1991)
 - 9. Union City Community Schools 54 IDELR 131 (United States Department of Education, Office for Civil Rights (2009).

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10. 28th Annual State Superintendent's
Conference On Special Education and Pupil
Services Leadership Issues Wisconsin
Department of Public Instruction Section 504: A
Legal Overview November 2012 Presenter: Art
Cernosia, Esq. - LLC

Questions and Answers on the ADA Amendments Act of 2008 for Students with Disabilities Attending Public Elementary and Secondary Schools

- 11. <http://www2.ed.gov/print/about/offices/list/ocr/docs/dcl-504faq-201109.html>

*Wisconsin Accommodation Guide for Students with Disabilities

<http://dpi.wi.gov/sites/default/files/imce/sped/pdf/accom-guide.pdf>

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